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July 29, 2004

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Appeal

Name of Case: Worker Appeal

Date of Filing: April 5, 2004

Case No.: TIA-0077

XXXXXXXXXX (the Applicant) applied to the Department of Energy (DOE) Office of Worker Advocacy (OWA) for assistance in filing for state workers' compensation benefits. The Applicant was a DOE contractor employee, and he claimed that he had three illnesses that are a result of exposure to toxic substances at a DOE facility. An independent physician panel (the Physician Panel or the Panel) rendered a positive determination on one illness and negative determinations on the other two. The OWA accepted the Panel's determinations, and the Applicant appealed to the DOE's Office of Hearings and Appeals (OHA). As explained below, we have concluded that the appeal should be denied.

I. Background

A. The Applicable Statute and Regulations

The Energy Employees Occupational Illness Compensation Program Act of 2000 as amended (the Act) concerns workers involved in various ways with the nation's atomic weapons program. See 42 U.S.C. §§ 7384, 7385. The Act provides for two programs, one of which is administered by the DOE. 1/

The DOE program is intended to aid DOE contractor employees in obtaining workers' compensation benefits under state law. Under the DOE program, an independent physician panel assesses whether a claimed illness or death arose out of and in the course of the worker's employment, and exposure to a toxic substance, at a DOE facility. 42 U.S.C. § 7385o(d)(3). In general, if a physician

1/ The Department of Labor administers the other program. See 10 C.F.R. Part 30; www.dol.gov/esa.

panel issues a determination favorable to the employee, the DOE instructs the DOE contractor not to contest a claim for state workers' compensation benefits unless required by law to do so, and the DOE does not reimburse the contractor for any costs that it incurs if it contests the claim. 42 U.S.C. § 7385o(e)(3). As the foregoing indicates, the DOE program itself does not provide any monetary or medical benefits.

To implement the program, the DOE has issued regulations, which are referred to as the Physician Panel Rule. 10 C.F.R. Part 852. The OWA is responsible for this program and has a web site that provides extensive information concerning the program. 2/

B. The Application

The Applicant was employed as a health physicist at a DOE site. The Applicant was born in 1918. He worked at the site for 30 years, until his retirement in 1976. The Applicant sought physician panel review of three claimed illnesses: skin cancer, pulmonary fibrosis, and Graves Disease (hyperthyroidism). The Applicant claimed exposure to ionizing radiation and dust.

The OWA referred the application to a physician panel, and the Panel's determinations are reflected in a February 2004 report. The Panel rendered a positive determination on skin cancer. The Panel rendered negative determinations for the other two illnesses. For pulmonary fibrosis, the Panel found no diagnosis of pulmonary fibrosis or supporting history of exposure to dusts. For Graves Disease, the Panel stated that the Applicant was diagnosed with the disease 25 years after his retirement and that the illness was unrelated to his work at DOE. The Panel stated that ionizing radiation is associated with thyroid cancer but not with Graves Disease. The Panel's determinations on the illnesses were unanimous.

The OWA accepted the Physician Panel's determinations. Specifically, the OWA accepted the positive determination on skin cancer and the negative determinations on pulmonary fibrosis and Graves Disease.

2/ See www.eh.doe.gov/advocacy.

The Applicant appeals the OWA's acceptance of the negative determination on Graves Disease. The Applicant maintains that the panel determination contains a factual error.

II. Analysis

Under the Physician Panel Rule, independent physicians render an opinion whether a claimed illness is related to a toxic exposure during employment at DOE. The Rule requires that the panel (i) make a finding whether that illness was related to a toxic exposure at DOE and (ii) state the basis for that finding. 10 C.F.R. § 852.12.

The Applicant maintains that the Panel erred when it stated that the Applicant was not diagnosed with Graves Disease until twenty-five years after his retirement. The Applicant maintains that he was diagnosed with Graves Disease nine years after his retirement and that he reported symptoms of the illness during his employment.

As an initial matter, we note that the record supports the Applicant's assertion that he was diagnosed with Graves Disease about nine years after his retirement. A physician's report indicates that the Applicant was diagnosed with hyperthyroidism in 1986, ten years after his retirement. Record at 30. The physician was uncertain whether the hyperthyroidism was Graves Disease or Plummer's Disease, but the physician clearly gave a diagnosis of some type of hyperthyroidism. Record at 30. The physician's report also indicates, however, the Applicant's symptoms were recent: the physician's report describes the Applicant as giving a "2-3 month history of numerous symptoms consistent with" hyperthyroidism. Record at 28.

Although there appears to be a panel error in its statement of when the Applicant acquired Graves Disease, the date is not relevant to the Panel's determination that the illness is not related to the Applicant's work at DOE. The Panel rejected the Applicant's claim that the illness was related to ionizing radiation. The Panel stated that, although thyroid cancer is associated with ionizing radiation, Graves Disease is not. Moreover, there is nothing in the record to suggest that Graves Disease is associated with any type of toxic exposure. Accordingly, we see no basis for concluding that the Physician Panel's ultimate determination is incorrect and have determined that the Appeal should be denied.

IT IS THEREFORE ORDERED THAT:

- (1) The Appeal filed in Worker Advocacy Case No. TIA-0077 be, and hereby is, denied.
- (2) This is a final order of the Department of Energy.

George B. Breznay
Director
Office of Hearings and Appeals

Date: July 29, 2004